IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Second Appeal No. 171 of 2001
(old no.7 of 1999)

Smt. Amba Joshi …….. Appellant

Versus

Managing Committee,
Army School Almora & another…… Respondents

Date of decision: 29th July, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

(Himanshu)
P.A.

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Managing Committee,
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Mr. S. Dhulia, Senior counsel assisted by Mr. K.N. Joshi,
Learned counsel for the appellant.

Mr. D. Chauhan, learned Counsel for the respondents.

Hon. P.C. Pant, J.

This second appeal has been preferred under Section 100 of Code of Civil Procedure, 1908 and directed against the judgment and decree dated 07.12.1998 passed by the Mr. Ashok Kumar, the then, learned District Judge, Almora in civil appeal No. 03 of 1998 whereby allowing the appeal he had dismissed the civil suit No. 39 of 1993.

2) Brief facts giving rise to the appeal are that plaintiff-appellant, Smt. Amba, Joshi, instituted a suit in the Court of Civl Judge (Junior Division), Almora for declaring her termination from service as illegal and for a permanent injunction restraining the defendant-respondents from interfering the working of the plaintiff-appellant as teacher in the Army school.

As per the plaint there was a ‘Garuda’ school in District Almora and the plaintiff-appellant was a teacher in said school with effect from 04.09.1987 on a fixed salary of Rs. 200/- per month. In the year 1991, the said school was converted and started running under the name of style of Army School. The plaintiff-appellant sought appointment as teacher in the said new school and after interview on 13.07.1991 she was appointed as

teacher on 17.07.1991. As per terms and conditions mentioned in the appointment letter, she remained on probation for a period of three months and her consolidated salary was fixed at Rs. 750/- per month (original appointment letter is Exhibit-3, peper No. 13-C). On completion of three months, she alleges that she became a permanent teacher of said school. However, on 14.05.1993 and 08.06.1993, she received letters from Major B.K. Barua informing her that since her appointment was interim, she had to appear on 14.06.1993 for interview for regular appointment. The plaintiff-appellant protested the letters but the same were rejected. Finally, vide letter dated 29.06.1993 (Exhibit-7, paper No. 17-C) her services were terminated on the ground that the same were no more required. The plaintiff-appellant has challenged the authority of signatory of the letter of termination and instituted the suit for the reliefs as aforesaid.

3) The plaintiff-appellant contested the suit before the learned trial court and filed the written statements in which it was pleaded that earlier the Garuda school was run by Ex.-servicemen for education of their children and it had nothing to do with the Army school at that point of time. Later Army Welfare Education Society (A.W.E.S.) proposed to establish an Army school in Almora and took over the management of the school. It is not a case where the Garuda school got converted Army school but A.W.E.S. opened its school in place where the Garuda school was being run. The Managing Committee of the new school had all powers to take fresh interviews and issue fresh appointment letters to the teachers. The purpose of opening Army school by Army Welfare Education Society was that the children of Ex-servicemen as well as those of servicemen, who could not get admissions in the Central School be given education in the said school. It is admitted to the defendant-respondents that plaintiff-appellant was appointed at

fixed salary of Rs. 750/- per month on probation in 1991. In the written statement, it is further pleaded that when later the school was recognized in 1993 the regular teachers were required to be appointed as per the regulations, for which interview letters were issued to the teachers already working in the school. The plaintiff-appellant could not get selected in the interview, hence, her services were terminated vide impugned letter dated 29.06.1993. At the end of the written statement it was pleaded that the school was being regulated by the regulations framed by the Army Welfare Education Society and as such the suit was barred by Section 41 of Specific Relief Act.

4) Learned trial Court framed five issues and all the five were decided in favour of the plaintiff appellant and decreed the suit on 07.03.1998. Aggrieved by that, the defendant-respondents filed an appeal (Appeal No. 3 of 1998) before the District Judge. Almora, who after hearing the parties allowed the appeal and dismissed the suit on the ground that the appointments in the Army school were required to be made, after its recognition from Central Board of Secondary Education, as per the regulations framed by the Army Welfare Education Society. The interview letters were rightly issued to the candidates working on probation or temporarily. Learned lowed Appellate Court further held that since Army school was being run by a Society registered under the Societies Registration Act, as such no declaration or injunction could have been issued against it to appoint a particular person as teacher or to direct the school to continue with the particular teacher. Plaintiff-appellant, aggrieved by the judgment and order dated 07.12.1998 of the lower Appellate Court has preferred this second appeal.

5) Heard learned counsel for the parties at length and perused the entire lower Court record summoned by this Court.

6) Admittedly, plaintiff-appellant was appointed as teacher in the Army school on 17.07.1991 (Exhibit-3) on probation at fixed salary of Rs. 750/- per month. There is no dispute as to the letter dated 29.06.1993 (Exhibit- 7) being issued terminating the services of the plaintiff-appellant. The question before this Court is regarding validity of said termination order.

7) Mr. Sudhanshu Dhulia, learned senior Advocate appearing on behalf of the appellant argued that since the Army officers were in the Managing Committee of the School, therefore, the learned lower Appellate Court has erred in law by holding it a purely private school and the Court must see the real nature by lifting the veil of the Society running the school. Learned senior counsel, in this connection, drew my attention to the principle of law laid down in Smt. Rajni Sharma V. Union of India reported in 1995 Allahabad Law Journal pg 185, wherein it has been held that the Managing Committee of such schools comes within the definition of "State" and the teachers of the school cannot be fired at the whims of the members of the committee. The said case law relates to maintainability of the writ petition under Article 226 of the Constitution of India against management of similar Army school of Dehradun but in the said case also the Allahabad High Court refused to direct reinstatement of teachers in the school run by such Society instead awarded damages of Rs. 21,000/- to the concerned teacher. From the evidence on record, it is very clear that the teachers working in the Army school run by Army Welfare Education Society are not public servants. The Apex Court in the case of Smt. J. Tiwari V. Smt. Jawala Devi Vidya Mandir and others reported in AIR 1981 Supreme Court 122 has, in its para-5, observed as under:-

> *"Rights and obligations of an employee of private institution are governed by the terms of the contract*

entered into between the parties. Where under those terms the Principal's services were liable to be terminated on three month's notice, all that he would be entitled to, even if the dismissal is wrongful, is a decree for damages and not an order of reinstatement or declaration that notwithstanding the termination of his services he continued to be in services".

8) In the present case evidence or record clearly establishes that for the regular appointment of teachers in the Army school plaintiff-appellant did appear for interview for her regular appointment in the school in response to the interview call letters sent to her in the month of June 1993. P.W. 1, Smt. Amba Joshi, herself had admitted this fact in the cross examination. As such from the evidence on record adduced by both the parties it is clear that since she was not selected in the interview and the regular appointments were made in the school, her services were terminated on the ground that the same were no more required. As such there is no illegality in the impugned order. Had it been an illegal order one could have thought of damages but it is not the case so here.

9) On behalf of the plaintiff-appellant, my attention was also drawn to Exhibit- 3 (paper No. 13-C) which is letter of appointment of the plaintiff issued on 17.07.1991 and it was argued that since on the title of the letter after words "Army School Almora", in the small letters within bracket words "Formerly Garuda Junior High School established 1982" are mentioned, therefore, it is not a new school and plaintiff continued as teacher since 1987 and the learned lower Appellate Court has wrongly not considered services rendered by her in Garuda Junior High School. I see little force in the contention for the reason whether the plaintiff-appellant started working from 1987 or earlier in Garuda Junior High School or in the Army

school makes no difference for the reason that from evidence on record it is clear that on the recognition from the Central Board of Secondary Education in the year 1993 the teachers were required to be appointed as per the rules in consonance with the regulations applicable to the school recognized. As such, in my opinion, it makes no difference if plaintiff rendered her services in Garuda school on its conversion to Army school. The Copy of the rules of Army Welfare Education Society is paper No. 146-C in the trial Court's record. Rule 82 provides the procedure by which Managing Committee may recruit the teachers and Rule 85 provides the pay scale of the teachers including that of the primary teachers (Rs. 1200-30-1380-EB-30-1560-EB-40-1800-EB-40-2040). The procedure of termination of services is provided in Rule 116 of aforesaid Rules and Clauses- A of said Rules reads as under:

> *"In the case of temporary employees and probationers the services can be terminated by giving one month's notice or salary in lieu without assigning any reason, likewise, a probationer may resign his post by giving one month's notice or salary in lieu."*

10) Lastly, it is submitted on behalf of the appellant that as per the letter of appointment (Exhibit- 3) the probation period of the plaintiff was only three months and thereafter she should be treated to be a permanent employee. Undoubtedly, the letter of appointment includes a Clause that the probation period of the plaintiff would be three months but it does not say if she would be treated to be a permanent employee of the school thereafter. As against this the Central Board of Secondary Education, bye-laws provided under Rule-27 of Chapter VII reads as under: -

> *(1) "Except in the case of a purely temporary vacancy or leave vacancy or for a specific post of*

temporary nature, employee shall on initial appointment be on probation for a period of one year from the date of his/her joining the duties. The period of probation may be extended by the Managing Committee by a further period not exceeding one year. Services of an employee during probation may be terminated by the Managing Committee without assigning any reason by giving one month's notice in writing or one month's salary including all allowances.

(2) If an employee desires to be relieved during the period of probation, it will be necessary for him to give one month's notice in writing or one month's salary including all allowances unless and otherwise the Managing Committee permits relaxation under special circumstances."

11) In view of said Rule and the principle of law laid down in Pavenendra Narayan Verma V. Sanjay Gandhi PGI of Medical Sciences and another reported in (2002) 1 S.C.C. 520, neither the petitioner can be said to be permanent nor the termination order can be said to be stigmatice.

12) In view of the above discussions, substantial questions of law as raised in the grounds of appeal stand accordingly answered. This Court finds no reason to interfere with the judgment and order passed by the lower Appellate Court. Accordingly, the appeal is liable to be dismissed. The appeal is dismissed. Interim order, if any, granted earlier stands vacated. No order as to costs.

(P.C. Pant, J.)

Dt. 29th July 2004,
H. Negi